MISCELLANY.

The Confidence Game.—It has been judicially determined that "a sucker is a person readily deceived" (People *v.* Simmons, 125 App. Div. 234, 109 N. Y. S. 190) and there is nonjudicial authority that one is born every minute. And not since the beginning of human history has there been a lack of those who would take advantage of his credulity. The sacred chronicle, relating how Jacob personated Esau, but instanced a practice which then was ancient history, and which yet remains. Fraud is as old and ever new as human faith, human greed and human duplicity. The myriad frauds which are rendered possible by a confidence built up by long association, strengthened perhaps by ties of blood, are merely sordid, and their study affords little of profit. But the professional fraud, the studied system of the man who makes a living by playing on the weakness of his fellows, has been the theme of many stories of absorbing interest, and loses little when reduced to the more prosaic pages of the law reports.

For the obtaining of comparatively small amounts, apparently only a good appearance and an assured demeanor are essential. Thus in the afternoon of December 5, 1907, a well-dressed stranger walked into the office of the Clinton Wire Cloth Co. in Chicago and asked for the former cashier. Being told that he had severed his connection with the company, the prepossessing caller stated that in crossing the Rush Street bridge he had lost his pocketbook, and sought his friend the former cashier to obtain a small loan. After some parley he asked for a loan of $10 and got it so readily that he said, "Can't you let me have $20," and when that was laid out said, "Make it $30." Apparently sensing some reluctance at this point, he voluntarily gave his watch as security. Investigation made later of course revealed that the former cashier knew no such person, that the watch was worth $1.60, and that the same scheme had been worked on a number of other merchants. See People *v.* Weil, 243 Ill. 208, 90 N. E. 731.

But where a larger sum is desired a method so simple will not work, and whatever may be the device resorted to its psychological basis is always the same—the awakening in the prospective victim of the idea that he is going to get something for nothing. Thus in Defrese *v.* State, 3 Heisk. (Tenn.) 53, it appeared that a prosperous farmer of Union County, Tenn., was leaving Knoxville in his wagon when two strangers asked and obtained permission to ride. One of them left the wagon for a moment and while so doing dropped a folded paper from his pocket. The other stranger picked it up and unfolding it took from it, in sight of the farmer, a five cent piece and then refolded it. When the absent stranger came back the paper was returned to him, and after expressing his gratification at

its recovery he offered to bet that there was a five cent piece in the paper. The finder of the paper said that he had no money and urged the farmer to bet, and the latter, having seen the five cent piece taken out, was nothing loath to do so. Needless to say, when the paper was unfolded it was found that there was another "jitney" within. Judge Sneed appends to the opinion a note relating an unreported case where the same trick was worked with a small metal ball containing, as the event proved, two pearl buttons.

Different in detail but identical in psychology was the trick which formed the basis of the prosecution in People *v.* Shaw, 57 Mich. 403. Shaw and Jones were confederates in the fraud. Shaw had introduced himself to Brown as a traveler for a tea-dealing firm in Cincinati, and told him that one of the means for getting custom in a new place was offering purchasers a chance, by drawing cards, to get fifty pounds free, in addition to the purchase, if they drew the winning card. In order to carry out the scheme, he wanted Brown to accompany him, and showed him how to draw the lucky card, by a little dot on the back. While they were practicing, Brown, succeeding each time in drawing the card, Jones came up, appearing to be a stranger, and inquired what they were doing. Shaw told him he would show him, and gave him the same explanation as to the mode of selling tea, but did not tell him about the marked cards. Shaw, after some talk, said that Brown could draw the 50 pound card. Jones offered to bet $100 that he could not, and held out to Shaw what seemed to be a roll of bills. Shaw said that he had not the money, but had a $300 check; Jones said that he did not want the check; he wanted money. Shaw asked Brown if he had it. Brown said he had not a $100, but had $80. Brown at Shaw's request handed him the $80, and Shaw whispered to him to draw the marked card. He drew it, and it was a blank.

Identical in principle again is the old "green goods" trick, which is well exemplified in Crum *v.* State, 148 Ind. 401. A farmer named Haines lived near Marion, Ind., and on him called one Evans and his wife. During the evening Mrs. Evans discoursed at length as to how well her husband was doing in business, of how slow a business farming was, reiterating the ancient adage which has led so many to their destruction that no man ever got rich by working. After this seed was well planted Evans got Haines aside and told him that he had a chance to get counterfeit money which no man could tell from genuine at "five dollars for one," and the rest of the story which has been told so often since the serpent offered to let Eve in on the ground floor. A genuine bill was of course exhibited as a sample. Evans, Haines and a confederate named Crum each put in $5000 which Evans took. The entire shipment of counterfeit money was to come to Haines, but the box was not to be opened until all three were present. In due course a money express pack-

age came to Haines, and he hid the box in a pile of oats in his barn and sent for his fellow investors. That evening Evans and Crum came along and inquired if he had received the package, and then told him to bring it to a piece of woods about half a mile away. Crum cut the cords and unwrapped the package, and then asked Evans if the box looked as it did when he nailed it up. Evans said that the nails were larger in one of the lids than when he nailed it up. The lid was then pried off, and nothing but bunches of paper were found in the box. Evans then said it was not the way that he had left it, that he had counted the money, placed it in the box and then nailed it up. He said if they told about this they "would all go to the penitentiary." He then flew into a passion, exclaimed that he had been robbed, that Crum and Haines had robbed him and that he would kill them both. With that he drew a revolver and pointed it at Haines, but Crum interfered and kept him from shooting. Crum grabbed Evans and they had a terrific scuffle, during which Haines, in great fright, took to his heels and ran through the woods.

One of most interesting and most successful confidence games, the "fake foot race," depends on the same basic principle of human nature. As narrated in Johnson *v.* State, 75 Ark. 427, 88 S. W. 905, it was worked by the so-called "Buckfoot gang" with great success in various parts of Utah, Missouri and Arkansas. The modus operandi involves a delegation to wait upon the prospective victim and tell him that in a nearby city there is an athletic club composed largely of millionaires, that the club has a runner in whom the members have great confidence, that he has been matched against a visiting racer who, he has found when too late, is much too good for him, and that therefore he desires to make something out of the situation by betting against himself. What he needs, it is explained, is some one unknown to his millionaire backers who can show himself to be a man of means, to bet his money for him, and he stands ready to give a handsome share of the winnings for this service. This seems to the "come on" to be easy and quite without risk. He is introduced to other members of the gang who pose as millionaire members of the club. They, in their capacity as financial autocrats, are exceedingly particular as to the standing of the persons with whom they bet, and the victim is induced to bring on money of his own to establish his financial status, the promoters of the game assuring him privately that it will be returned to him. The race is held, the visiting runner vindicates the reports of his prowess by leading handsomely down to the stretch, where he trips and falls, and the fool and his money are parted. It is of interest to note that the person defrauded in the Johnson case was no "babe in the woods" but the proprietor of four or five saloons in different Texas towns, over each of which was located a gambling hall. Other instances of the successful operation of this trick may be found recorded in

Stewart *v.* Wright, 147 Fed. 321, and Hobbs *v.* Boatright, 195 Mo. 693.

While it is the human rather than the legal side of the situation which is sought to be presented, it may be noted that in each of the cases cited the courts held that the transaction narrated constituted "larceny by trick." Even the fact that the victim expected to profit by a crime has been held to be no defense, the court saying in Crum *v.* State, 148 Ind. 401: "The fact that the credulous, simple-minded prosecuting witness was himself willing to aid in circulating counterfeit money, does not lessen the guilt of his tempters, any more than the weakness of the denizens of Eden excuse the villainy of the arch fiend who corrupted them." There is however a line of New York cases holding that the unlawful intent of the victim bars a prosecution, which at one time made the metropolis the happy hunting ground of the green goods operator. See McCord *v.* People. 46 N. Y. 470; People *v.* Livingstone, 47 App. Div. 283. By virtue of that doctrine immunity was in People *v.* Tompkins, 186 N. Y. 413, accorded to the members of a gang who, pretending to have secured by tapping a telegraph wire advance information of the outcome of a horse race, induced their victim to bet $50,000 at a fake pool room. The rule has since been abrogated in New York by an express statutory provision. Penal Law § 1290 (McKinney's Consul. Laws, Book 39, p. 458).

The facts in these and many other like cases not only adorn a tale but they point a moral. The general opinion seems to be that the sharper goes forth to prey on the honest and innocent, and that the more honest the victim the more certain his fall. On the contrary, from the yokel who, as related in Rex *v.* Salomons, 17 Cox C. C. 93, paid half a crown for a purse into which he thought he had seen a street vendor drop two half-crowns, down to the farmer in State *v.* Crum, who wearied of the slow earnings of honest labor and would invest in counterfeit money at five dollars for one to pass on his neighbors, it was the greed and dishonesty of the victim which barbed the hook which caught him. The law reports verify what the books of religion have taught, that simple honesty and unenvious contentment are more than a preparation for heaven; they are a sure guard against many of the pitfalls of earth.—Law Notes.

Talk to the Point.—Some of us would rather talk forever to prove our own side to be right than to yield an inch, even when we suspect that we are probably in the wrong.

A young lawyer in New Orleans, seeking information from Judge Lazarus, an old lawyer of much experience, asked how he should talk in a certain case.

"Talk to win," was the answer. "If justice is in your favor, then

talk justice. If law is in your favor, then talk law. If both are against you, then talk around it. Find the thing most in your favor, talk about that, and forget the rest."—The Lawyer and Banker.

The "Sleeping Beauty."—In Larson *v.* Russell, 176 N. W. 998, decided by the Supreme Court of South Dakota, Dec. 11, 1919, the majority opinion contains the following statement of facts:

"It appears that on February 3, 1915, the plaintiff was working in the capacity of a domestic servant in the rooming house occupying a building known as the Ely Block and Annex on Broadway, in the city of Fargo. The portion of the building which was used as a rooming house had been leased to her brother-in-law, one Papas, or Papamanoles, and the lease assigned by the latter to Emma Larson, the mother of the plaintiff. On the date mentioned, while the plaintiff was thus employed, she had occasion to go down the steps of a stairs on the outside at the rear of the building, and while making the descent a section of the veneered brick wall fell out, some of the bricks striking the plaintiff and inflicting injuries upon her. * * * At the time the plaintiff received the injury she was twenty-two years of age. She enjoyed good health, and was receiving for the work that she had been doing $25 per month and her room and board. On the day of the accident the plaintiff's brother found her lying at the bottom of the stairway at the rear of the building in an unconscious condition, with the bricks from the fallen wall lying upon and about her. She was carried to a room in the building, bleeding at the mouth and nose, and upon her back there was a bruised area over the spinal column and about the shoulder blades. A doctor was at once called to attend her, and up to the day of the trial she had been constantly under the care of this physician. Between the date of the injury and the date of the trial, a period of approximately three years, the plaintiff had been bedfast and in a paralyzed condition which her doctor described as traumatic neurosis. This disease is attributed to the injury in question, and the diagnosis of its presence is positive."

The plaintiff secured a verdict for $26,000 damages against the owner of the building, which was at first affirmed on appeal by a divided court.

Judge Robinson, who has a wide reputation as a judicial humorist delivered a dissenting opinion, part of which is as follows:

"The plaintiff is known to the court as the Sleeping-Beauty. She is an ideal of physical perfection, and yet she claims that for three years she has been reposing continuously on her bed. Her mother is the holder of a rooming house tenement on Broadway, in the city of Fargo. She holds it as the assignee of a lease made by the defendant to Papamanoles. The lease was made in April, 1913. Two months afterwards it was assigned to the mother. Then, to-

wards the last days of February, 1915, and nearly two years afterwards, during a violent storm, the plaintiff had the misfortune and imprudence to go down the back stairway, when some of the brick veneering fell on her shoulders, to her great injury. Her claim is that she has been permanently injured and paralyzed, so that she will always be confined to her bed. It appears beyond dispute the falling brick contused the flesh on her shoulders, but did not cut or break the skin or in any way mar her personal appearance. At the trial her body showed no signs of bedsores, though she claimed to have been continuously in bed for three years. The doctors examined her head, eyes, mouth, tongue, teeth, and found everything normal. She is a well-built young woman; her arms, legs, and body are normal and well nourished; her digestion is good; her weight is normal; her muscles are natural and not shrunken. From the crown of her head to the soles of her feet she has not on her body a scar, a blemish, or a defect. Hence we call her the Sleeping Beauty. The appeal is from a verdict and judgment for $26,000. The trial was conducted in a manner decidedly improper. As in a theatrical play, the plaintiff was brought into court on a cot, and by her tears, screams, and appealing looks she impressed the jurors—won their pity and commiseration. Then, it appears that counsel in his zeal for defendant forgot all prudence, and cross-examined the plaintiff, and gave her an excuse for tears, and angered the jury. And the plaintiff was shrewd and perceptive; she knew when to weep, when to scream, when to remember and when to forget. The appeal was to the pity and commiseration of the jury, rather than to their deliberate judgment. If the plaintiff was in a helpless condition her testimony should have been taken by deposition and the court should not have permitted any theatrical play. The verdict must be largely for future damages, and to give the jury some basis for guessing at such damages proof was given that plaintiff was only twenty-two years old; that she had a fair prospect of forty years in bed, with the expense of attending physicians and nursing, and the loss of her earning capacity. Her three physicians testified that, in their opinion, her injury was permanent. Three other physicians testified that, in their opininon, she was merely shamming, and that she could walk if she wanted to. To give weight to this testimony, it was shown that plaintiff had been kept in seclusion in the building in which she was injured, and she had been kept from general observation, and not in a hospital or sanitarium. Of course such treatment and such seclusion lend color to the charge that she was acting a part and to a great extent shamming. Hence defendant offers to pay such sum of money as may be necessary to give the plaintiff the best care and medical treatment and attendance at the best sanitariums and hospitals, and to pay her, or to the clerk for her use, such sum as the court may think just and reasonable, or about

$700 a month for six months. But to that offer counsel for plaintiff do strenuously object. By right or wrong, they have obtained a verdict, and by fas or nefas they purpose to hold onto it. In argument counsel have shown that in cases like this such verdicts are often obtained by fraud and imposition on courts and jurors, and that after payment of the judgment the plaintiff quickly recovers from the alleged personal injury. In this case, if the plaintiff recover $13,000, and her counsel $13,000, I think that within a year the Sleeping Beauty would be perfectly cured and the judges would have reason to feel like dolts. Certainly the verdict is so grossly excessive as to show that the jurors were affected by the theatrical acting and by the tears of the Sleeping Beauty."

On motion for rehearing the court reversed itself and ordered a new trial. On the motion to reconsider Justice Robinson said in part:

> "'Open your mouth and shut your eyes,
> And I will give you something to make you wise.'

"Such is the plea of plaintiff's counsel. By a great theatrical play, and by very questionable means, they have obtained a personal injury judgment for $26,000. On this they have filed a lien for $11,000, and now, on the motion for a new trial, they beg the judges to shut their eyes to the light of truth, the facts in the case, the manner of conducting the trial, the way the plaintiff has been kept in seclusion, under lock and key, by her elder sister and Papamanoles, who were living together without being married. They wish the judges to shut their eyes to the way in which Papamanoles, the head of the Larson family, attempted to get rich at the expense of his creditors, his building the Riverside Flats, mortgaging the same to his mother-in-law for $15,000, conveying the same to her for $20,000, going into bankruptcy, taking with him into the federal court the whole Larson family to swear that they had loaned him the money to build the flats. The judges are requested to shut their eyes to the way in which the suit was first commenced against the city of Fargo to recover for the injury, $10,000, with no claim that the plaintiff had been paralyzed. * * * If the plaintiff had sustained injury to the amount of $26,000, and if she alone was paralyzed, and not the counsel, then, of course, she should have the great bulk of the money, and the counsel should be well satisfied with a fee of $5,000. When they charge $11,000 (a sum that no court should permit) it must mean that they did something extraordinary; that by some shrewd and theatrical practice they recovered a verdict largely in excess of the real injury. Truly, on the trial of the case the theatrical play was so wonderful it does seem the fitting climax was to cast on the screen, 'Attorney's fee, $11,000.'"

A Wonderful Court.—"The greatest court in the world" is the term that has been applied to the judicial Committee of the Privy Council in Great Britain, a committee with a quorum of only three, which meets in a small stuffy, dingy room in London. Our Supreme Court is the final court of appeal for nearly 100,000,000 people; this court has jurisdiction over 425,000,000 people, and throughout an area of nearly 14,000,000 square miles.

The subjects with which it deals include questions of old Norman custom, from the Channel Islands; of Roman-Dutch law, from South Africa; of the Code Napoléon, from Mauritius; of Ottoman law, from Cyprus; of naval matters, from the admiralty courts; of church affairs from the ecclesiastical courts; and of the religious rights of Hindus and Mohammedans, from India. It is from India that the greatest number of appeals are received.

One such appeal, on a point of conflicting religious rights, had been first decided by a remote village court, and appealed to the Supreme Court of Calcutta. Both decisions had gone against the Mohammedans. They despaired of justice until a shrewd and very holy dervish declared that there yet remained another power to which they could appeal—a power greater than the King-Emperor himself!

Accordingly, an appeal was taken to this mysterious power, by whom the case was decided in favor of the Mohammedans. Three months later, when the news came, great bonfires were set blazing on the hills in India. The local British Commissioner, somewhat perturbed over a commotion he did not understand, inquired its reason of his native butler, who told him with mingled awe and exultation:

"Sahib, the people are lighting fires in honor of the great sage. who they say rules the Emperor.—Judish-al-Komiti!"